

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

FERMIN CORTEZ, on behalf of  
themselves and all other similarly  
situated individuals, et. al.,

Plaintiffs,

v.

NEBRASKA BEEF, INC., and  
NEBRASKA BEEF, LTD.,

Defendants.

Case No. 8:08-cv-90

DAVID CHUOL, on behalf of himself  
and all other similarly situated  
individuals,

Plaintiffs,

v.

NEBRASKA BEEF, LTD.,

Defendant.

Case No. 8:08-cv-99

DEFENDANTS' MOTION FOR  
RECONSIDERATION OF REFERRAL  
TO UNITED STATES ATTORNEY

COME NOW Defendants, Nebraska Beef, LTD and Nebraska Beef, Inc. (collectively "Nebraska Beef"), and move the Court to reconsider and withdraw its May 4, 2011 referral to the United States Attorney for the District of Nebraska, as described below, arising out of the production of documents by Nebraska Beef in the above-captioned matters (the "Referral") for the following reasons:

1. During the trial of this matter, Plaintiffs improperly and without basis in fact asserted that certain documents produced to Plaintiffs by Nebraska Beef (the Produced Documents) had been fabricated or falsified. (Index of Evidence in Opposition to Plaintiffs' Motion for Sanctions and in Support of Defendants' Motion for Reconsideration of Referral to United States Attorney ("Index of Evid."), Ex. 1, Att. "A", pp. 148:12-13; 151:7-11; Att. "B", pp. 177:11; 186:7, 25)).

2. Plaintiffs improperly requested that the Court take action with regard to the alleged fabrication or falsification. (Index of Evid. Ex. 1, Att. "B", pp. 177:11; 186:7, 25).

3. On May 4, 2011, the Court advised the parties that the Court had asked the United States Attorney to conduct an investigation into the veracity and delivery of the Produced Documents and that each of Nebraska Beef's witnesses would be advised of their Fifth Amendment rights as a result of an active investigation by the United States Attorney. The Court subsequently advised the parties that the Court intended to send the record of the proceedings to the United States Attorney, upon completion of the proceedings, for investigation, and that it would be appropriate to advise Nebraska Beef's representatives of this intention prior to receiving any testimony from those representatives. (Index of Evid. Ex. 1, Att. "B", pp. 171:20-172:5; 173:13-22; 191:10-17; 202:18-203:20).

4. Nebraska Beef's former counsel, Lamson Dugan and Murray, LLP ("LDM"), properly declared that Plaintiffs' counsel's baseless allegations, when

combined with the Referral, create an actual conflict of interest. (Index of Evid. Ex. 1, Att. "B", pp. p. 201:22-23; Ex. 2; Ex. 3).

5. The Produced Documents which led the Court to make the Referral were not falsified. (Index of Evid. Exs. 1-22).

6. A finding that the Produced Documents were not falsified or fabricated and the reconsideration of the Court's intention to proceed with the Referral would eliminate any actual conflict of interest.

7. A finding that the Produced Documents were not falsified or fabricated and the reconsideration of the Court's intention to proceed with the Referral will allow LDM to reappear as counsel of record for Nebraska Beef in the above-captioned matters, and trial can proceed at the earliest possible time.

Dated this 5th day of July, 2011.

NEBRASKA BEEF, INC and NEBRASKA  
BEEF, LTD., Defendants

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By: /s/ James M. Bausch  
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of July, 2011, I electronically filed the above using the CM/ECF system which sent notification of such filing to the following:

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